IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 10/03/2003

Coram

THE HON'BLE MR.JUSTICE E.PADMANABHAN

WRIT PETITION NO.7745 of 1998 and WRIT PETITION NO.19105 OF 1998
AND
WMP Nos:11782 and 28987 OF 1998

K.Malini ..Petitioner
in both WPs

-Vs-

1. The Secretary
Tamil Nadu Legislative Assembly
Secretariat
Chennai

2. The Secretary
Tamil Nadu Public Service Commission
Government Estate
Chennai-2 ..Respondents
in both WPs

For petitioner :: Mr.R.Thiagarajan, S.C.,for
M/s.K.Venkataraman
M.Muthappan

For respondents:: Ms.V.Velumani AGP
Mr.Paul Vasantha Kumar for R.2

Writ petitions filed under Art.226 of The Constitution of India
praying for the issue of a writ of certiorarified mandamus, as stated therein.

:O R D E R

In W.P.No:7745 of 1998, the petitioner has prayed for the issue of a writ of mandamus directing the respondents 1 and 2 to regularise the services of the petitioner in the post of Typist in the first respondent Secretariate and pass such other further order or orders.

2. In W.P.No:19105 of 1998 the very same petitioner challenge the

proceedings of the Tamil Nadu Public Service Commission, the second respondent herein in Letter No.6782/CD-B2-96, dated 3.11.1998 and quash the same and consequently direct the respondent to regularise the services of the petitioner with all attendant and consequential monetary benefits. The petitioner and respondent are common in both the writ petitions.

3. Heard Mr.R.Thiagarajan, learned senior counsel appearing for Mr. M.Muthappan for the petitioner, Ms.V.Velumani, learned Additional Government Pleader appearing for the first respondent and Mr.N.Paul Vasantha Kumar, learned counsel appearing for the second respondent Commission.

4. It may not be necessary to set out the facts in detail in the light of the directions which this court proposes to issue.

5. The petitioner a Typist temporarily appointed in the Tamil Nadu Legislative Assembly is governed by the Tamil Nadu Legislative Assembly Service Rules framed under Article 187 of The Constitution of India. The petitioner was initially appointed as temporary Typist in the Legislative Assembly Department and she has been working continuously on and from 6.11.1989. The petitioner was sponsored by the Employment Exchange. But she was appointed on temporary basis. When such appointment continued, the first respondent-Legislative Assembly Department addressed the second respondent-Public Service Commission for concurrence and continuance of the writ petitioner's appointment as a regular candidate sponsored by the Service Commission while setting out certain facts, circumstance and the background in which the petitioner came to be appointed on temporary basis and her continuance in service of the Legislative Assembly Department. The Commission reiterated its earlier stand by letter dated 7.8.1996 and refused to grant its concurrence for the continuance of the petitioner and advised that the petitioner may be discharged.

6. In the meanwhile, the Service Commission issued a Notification for the Special Qualifying Examination conducted during 1994 for regularisation of the temporary posts of Junior Assistant, Typist, Steno Typist etc., who were recruited through Employment Exchange and who are temporary hands working in the said posts during the period set out in the said Notification. The petitioner once again made representation through the Hon'ble Speaker seeking for regularisation of her services. The Personnel and Administrative Department took the view that the request of the petitioner could not be considered as she has not qualified herself in the Special Qualifying Examination conducted during 1994. Despite the said facts, the petitioner was allowed to continue ins service and the Legislative Assembly Secretariat once again requested the Service Commission for concurrence for the regularisation of her temporary services. The Service Commission declined to giver concurrence for regularisation of the petitioner's temporary services by the impugned letter dated 3.1.1998. Hence the present writ petition.

7. Earlier the petitioner has filed W.P.No.7745 of 1998 seeking for a direction to regularise her services in the Legislative Assembly Department,

while pointing that she has been working for more than a decade and that she should be regularised. Later, the petitioner filed the second writ petition challenging the decision of the Service Commission.

8. Both the writ petitions are taken up together and common arguments were advanced. Mr.N.Paul Vasantha Kumar, learned counsel appearing for the Service Commission sought to sustain the views taken by the Service Commission while Mr.R.Thiagarajan, learned senior counsel represented that the different stand taken by the Service Commission in respect of the petitioner alone would amount to discriminatory treatment as persons identically placed were given a favoured treatment, while pointing out that the Service Commission has given concurrence for regularization of identical appointees. Mr.N.Paul Vasantha Kumar, learned counsel for the Service Commission in turn contended that the cases of two other individual appointees in whose favour concurrence was given by the Commission were differently placed and therefore the same cannot be cited as an example, nor the plea of discrimination, nor the plea of estoppel would apply.

9. Mr.R.Thiagarjan, learned senior counsel raised the only contention, namely that the petitioner alone has been singled out and treated differently while the two others namely Tmt.Santhanamathi and Tmt. Kanmani Vasantharani have been treated differently and it is just and fair that the petitioner is also given the same treatment. In this respect, the learned senior counsel referred to the following paragraphs in the Counter Affidavit filed on behalf of the second respondentService Commission. The relevant portion of the counter affidavit read thus:-
"20. As the plea of the Government to regularise the petitioner in the post of Typist was not in order, s it is violative of the G. O.Ms.No.433 P & A.R.(P.C) Dept., dated 14.12.1993 and G.O.ms.No.270, Tamil Nadu Legislative Assembly Secretariat Department dated 7.11.1994 , the Commission had refused concurrence to regularise her, in the above letters. The petitioner had challenged the above letter in this writ petition. The Commission's letter challenged by the petitioner was addressed to the Secretary, Tamil Nadu Legislative Assembly Secretariat Department and not to the petitioner. The necessary reply for the Government's letter had been sent by the Commission to the Head of the Department i.e., the Secretary to Government Tamil Nadu Legislative Assembly Secretariat Department. Even before the receipt of the same by the Head of the Department, she took necessary action on that, it seems that the petitioner had manipulated to obtain the same and challenged it in her individual capacity which was done in flagrant violation of any official norms. In the said circumstances, the contention of the petitioner that no positive reply from the second respondent i.e., the Commission is not correct and the contention of the petitioner may be rejected.

21. With reference to the petitioner's contention in para 4 of the affidavit that "two candidates namely Tmt.S.Santhanamathi and Tmt. Kanmani Vasanthamani" were given concurrence for their regularisation by the Commission, it is submitted that the Government in the Tamil Nadu Legislative Assembly Secretariat in their letter dated 29.9.1997 had addressed the Commission for issue of concurrence for regularisation ofo the said two

candidates. The contents of the letter are reproduced below which is self explanatory.

"Since the above two candidates, have been serving continuously or a long period, their request for regularisation their temporary services was intimated to the Tamil nadu Public Service Commission in order to obtain its concurrence under latter part of Regulation 16(b) of The Tamil Nadu Public Service Commission Regulations, 1954. However, in its letter fifth cited, the Tamil Nadu Public Service Commission has conveyed its inability to accord its concurrence. In this connection, I am to state that these two candidates, viz,. Tmt.S. Santhanamathy and Tmt.C.Kanmani Vasantharani have been working for more than 7 years, only under emergency provisions. This being the case, the Government have taken a sympathetic consideration in the case of those temporary personnel who had been recruited through the Employment Exchange and issued orders in G.O.ms.NO.996, Personnel & Administrative Reforms (Placement) Department, dated 22.9.1984, for regularising their service, after obtaining due concurrence of the Tamil Nadu Public Service Commission. Like wise, in G.O.Ms.No.433, Personnel & Administrative Reforms (Placement-Cell) Department dated 14.12.1993, the temporary services of such candidates were regularised by conducting a Special Qualifying Examination by the TNPSC. It may be quite pertinent to state that in the above processes, the temporary services of those candidates who had put in a day's temporary services, were also regularised. I am also to add that those two candidates are under indigent circumstances, since the ormer had lost her husband and the latter;s husband is unemployed. They have to shoulder the entire responsibilities of their families. Getting a placement of any other office at this stage is also too hard to be thought of. Hence, it has become necessary to consider their cases sympathetically. I am therefore, to request you to kindly reconsider the requests of these two candidates on a humanitarian approach and to take early action for obtaining and communicating the concurrence of the Tamil Nadu Public Service Commission, so as to enable them to be appointed on regular basis".

22. As the Government have requested to reconsider the Commission's stand and to take humanitarian view, the Commission gave its concurrence for the regularisation of the two individuals viz., Tmt.S. Santhanamathy and Tmt.C.Kanmani Vasantharani by its order dated 21.3.1998.
23. Moreover, the two persons mentioned above had not appeared for the Special Qualifying Examination'94 conducted by the Commission; Unlike the above two persons the petitioner had the chance for appearing for the Special Qualifying Examination GroupIV'94 by virtue of her temporary service. While 4329 candidates had appeared for the said examination, 2618 candidates were selected and their services were regularised consequently. For the total 200 marks (one paper i.e., English 100 marks and the other paper General 100 Marks) the candidates were required to take the minimum qualifying marks of

30# in the aggregate i.e., the minimum marks for pass was fixed as 60 marks in aggregate. But, the petitioner had secured only 28 marks in aggregate viz., English-11, General Knowledge 17) for the required aggregate of 60 marks.

10. On a consideration of the above portions, it is clear that there

is no difference, much less, considerable or material difference between the case of the petitioner viz-a-viz Tmt.Santhanamathy and Tmt.Kanmani Vasantharani. On all aspects, they are identically placed. However, Mr.N.Paul Vasantha Kumar, learned counsel appearing for the Service Commission contended that the two persons in whose favour the second respondent Service Commission had given concurrence are in a pitiable condition and therefore such a concurrence had been accorded.

11. It is not as if there has been any comparison between the said two candidates and the writ petitioner when the Commission considered the request of the petitioner. The reliance placed on the letter forwarded by the Legislative Assembly Secretariat Department is the only material if at all that could have been placed in favour of the said two persons for a favoured treatment as against the writ petitioner. It may be that the Legislative Assembly Secretariat Department has not worded the letters identically or carefully or as effectively as the others. But in every respect the said two persons namely Tmt.Santhanamathy and Tmt.Kanmani Vasantharani are identically placed. Factually, the petitioner also has been in continuous service. The petitioner was also doing certain urgent pressing work like the two others. The indigent circumstances relied upon or suggested will also apply to the case of the petitioner. As already pointed out, the Legislative Assembly Secretariat Department while forwarding the papers might not have highlighted the indigent circumstance of the petitioner as well as her social status or financial position. Only in certain aspect of the matter, there may be a little difference, but it will not be a a ground to treat the petitioner differently from that of the said Tmt.Santhanamathy and Tmt.Kanmani Vasantharani. The learned senior counsel appearing for the petitioner is well founded in his contention that the petitioner should not have been treated differently than that of the two others as there is no difference, much less, substantial or material difference which may disentitle the petitioner from having the same treatment.

12. In the circumstances, this court is of the considered view that the mater requires and deserves reconsideration in the hands of the second respondent-Service Commission and the Commission may have a fresh look and consideration and therefore it is proper to remit back the matter to the Service Commission for being considered taking into consideration of the entire matter and in particular the background of the petitioner's case viz-a-viz the other two candidates in whose favour concurrence has been accorded as a relaxation. The Service Commission may reconsider the matter taking into consideration of the entire facts and the over all view of the matter. The Service Commission has to decide the issue afresh as it is the expert body in such matters independent of the view expressed by the Personnel and Administrative Reforms Department, while considering the request for relaxation or concurrence for regularisation of her services.

13. The petitioner has been working for more than a decade and allotted to work and if she is to be turned out at this stage as she is already aged above Forty, she may not find an employment at all. This court is confident that the case of the petitioner may receive full consideration in the hands of the Service Commission on par with other cases. Till the Service

Commission reconsider and communicate its decision, the services of the petitioner shall be continued. It is for the Service Commission to call for fur ther reports from the Legislative Assembly Secretariat Department and it is also equally open to the petitioner to make further submissions to justify her request through proper channel.

14. Writ Petition No.19105 of 1998 is allowed. The impugned letter No.6782/CD-B2-96, dated 3.11.1998 is quashed and the matter is remitted back to the second respondent-Service Commission for de novo consideration.

15. Consequently, connected WP.NO.7745 of 1998 is closed. Connected WMPs are also closed. The parties shall bear their respective costs.

Internet: Yes

Index: Yes
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Copy to:-
1. The Secretary
Tamil Nadu Legislative Assembly
Secretariat
Chennai

2. The Secretary
Tamil Nadu Public Service Commission
Government Estate
Chennai-2